

## Farm Service Agency, USDA

## § 718.307

Chapter XIV of this title, the Executive Vice President, CCC; or

(4) The participant knew or had reason to know that the determination was erroneous.

(b) Should an erroneous determination become final under the provisions of this section, the erroneous decision will be corrected according to paragraph (c) of this section.

(1) If, as a result of the erroneous decision, payment was issued, no action will be taken by FSA, CCC, or a State or county committee to recover unearned payment amounts unless one or more of the exceptions in paragraph (a) of this section applies;

(2) If payment was not issued before the error was discovered, the payment will not be issued. FSA and CCC are under no obligation to issue payments or render decisions that are contrary to law or regulation.

(c) FSA and CCC will modify and correct determinations when errors are discovered. As specified in paragraph (b) of this section, FSA or CCC may be precluded from recovering unearned payments that issued as a result of the erroneous decision. FSA or CCC's inability to recover or demand refunds of unearned amounts as specified in paragraph (b) will only be effective through the year in which the error was found and communicated to the participant.

[67 FR 66307, Oct. 31, 2002, as amended at 80 FR 41998, July 16, 2015]

### **§ 718.307 Special relief approval authority for State Executive Directors.**

(a) *General nature of the special authority.* Notwithstanding provisions in this subpart providing supervision and relief authority to other officials, an SED, after consultation with and approval from OGC but without further review by other officials (other than the Secretary) may grant relief to a participant under the provisions of §§ 718.303 through 718.305 as if the SED were the final arbiter within the agency of such matters so long as:

(1) The program matter with respect to which the relief is sought is a program matter in a covered program which is operated within the State under the control of the SED;

(2) The total amount of relief which will be provided to the participant (that is, to the individual or entity that applies for the relief) by that SED under this special authority for errors during that year is less than \$20,000 (including in that calculation, any loan amount or other benefit of any kind payable for that year and any other year);

(3) The total amount of such relief which has been previously provided to the participant using this special authority for errors, as calculated above, is not more than \$5,000;

(4) The total amount of loans, payments, and benefits of any kind for which relief is provided to similarly situated participants by an SED for errors for any year under the authority provided in this section, as calculated above, is not more than \$1,000,000.

(b) *Report of the exercise of the power.* A grant of relief shall be considered to be under this section and subject to the special finality provided in this section only if the SED grants the relief in writing when granting the relief to the party who will receive the benefit of such relief and only if, in that document, the SED declares that they are exercising that power. The SED must report the exercise of that power to the Deputy Administrator so that a full accounting may be made in keeping with the limitations of this section. Absent such a report, relief will not be considered to have been made under this section.

(c) *Additional limits on the authority.* The authority provided under this section does not extend to:

(1) The administration of payment limitations under part 1400 of this chapter (§§ 1001 to 1001F of 7 U.S.C. 1308 *et seq.*);

(2) The administration of payment limitations under a conservation program administered by the Secretary; or

(3) Highly erodible land and wetland conservation requirements under subtitles B or C of Title XII of the Food Security Act of 1985 (16 U.S.C. 3811 *et seq.*) as administered under 7 CFR part 12.

(d) Relief may not be provided by the SED under this section until a written opinion or written acknowledgment is obtained from OGC that grounds exist

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for determination that requirements for granting relief under § 718.303 or § 718.304 have been met, that the form of relief is authorized under § 718.305, and that the granting of the relief is within the lawful authority of the SED.

(e) *Relation to other authorities.* The authority provided under this section is in addition to any other applicable authority that may allow relief.

[67 FR 66307, Oct. 31, 2002, as amended at 80 FR 41998, July 16, 2015]